IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 202 of 2000

AGAINST THE ORDER DATED 09/02/2000 IN CC.243/1996 IN
CR.135/1998 of SESSIONS COURT, KASARAGOD
CC.243/1996 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD

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REVN. PETITIONER:

CHEVERI DAMODARAN NAIR,
S/O BETHOOR KUNHAMBU NAIR
RESIDING AT CHUNDA P.O., KUTTIKOLE,
KASARAGOD TALUK AND DISTRICT.

BY ADV. SRI.A.P.CHANDRASEKHARAN

RESPONDENTS:

1. K.ASHOKAN
   S/O V.K.KRISHNANA NAIR
   KANATHIL HOUSE, P.O. BEDAGAM
   KASARAGOD TALUK AND DISTRICT

2. THE STATE OF KERALA
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA
   ERNAKULAM

   BY PUBLIC PROSECUTOR
   SRI.SREEPRAKASH K.NAIR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.202 OF 2000

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Dated this the 28th day of November 2007

ORDER

Petitioner who has been concurrently found guilty by the trial court as well as the appellate court under Section 138 of the Negotiable Instruments Act has preferred this revision petition.

2. The case of the complainant (respondent no.1 herein) was that the petitioner/accused had taken a loan of Rs.65,000/- from him in December 1995. In discharge of the said debt, the accused had issued a cheque dated March 10, 1996 for the above sum of Rs.65,000/-. When the cheque was presented for encashment, it was dishonoured for want of sufficient funds in the account of the accused. Though a statutory notice was issued, the accused had failed to discharge the debt. Hence the complaint.

3. The trial court considered the oral testimonies of PWs 1 to 3 and Exts.P1 to P6 produced by the complainant before the court and found that the complainant had proved his case satisfactorily. It was held that the petitioner had issued the cheque in discharge of the debt and that it was dishonoured for

want of sufficient funds in his account. Accordingly, the trial court found the petitioner guilty under Section 138 and he was convicted and sentenced to undergo imprisonment for three months and also to pay a fine of Rs.80,000/- and in default of payment, to undergo simple imprisonment for two months. It was further directed that on realisation of the fine amount, the complainant shall be paid Rs.75,000/- as compensation under Section 357(3) of the Code of Criminal Procedure.

4. The above order of conviction and sentence was challenged by the petitioner before the Sessions Court, Kasaragode. The learned Sessions Judge, after reconsidering the entire evidence, concurred with the finding entered by the trial court and the order of conviction and sentence was confirmed and the appeal was dismissed. Hence this revision petition.

5. It is contended by the learned counsel that the courts below had not properly appreciated the oral and documentary evidence. According to the petitioner, the complainant had misused a cheque leaf obtained by him somehow. It is further contended that the courts below failed to notice that there was

no enforceable debt to be discharged by the petitioner.

6. It is pertinent to note that the petitioner had admitted his signature in the cheque. He had not even bothered to send a reply to the statutory notice issued by the complainant when the cheque was dishonoured. Curiously, the defence taken up by the petitioner was that he had lost the cheque book and pass book issued by the Bank in his favour. According to him, the complainant had somehow managed to get hold of one of the cheque leaves from the cheque book which he had lost. The official of the Bank who was examined in the court had deposed that the Bank had not received any complaint with regard to the loss of the cheque book. As mentioned earlier, petitioner had not disputed his signature in Ext.P1 cheque. It had also come out in evidence that Ext.P1 cheque issued by him was dishonoured due to insufficiency of funds in his account. Significantly, petitioner had not adduced any oral or documentary evidence in support of his contentions.

7. I have carefully perused the materials available on record. The evidence of PWs 1 to 3 undoubtedly establishes the

case of the complainant. I do not find any reason to interfere with the concurrent finding of conviction entered by the courts below. There is no merit in the revision petition and is liable to be dismissed. But in my view the sentence has to be modified slightly. The fine now imposed has to be converted as compensation.

8. At this stage, learned counsel for the petitioner submits that the petitioner is prepared to pay off the entire cheque amount with adequate compensation. He further submits that the amount will be deposited before the trial court on or before December 10, 2007.

9. Learned counsel for the complainant submits that the complainant is only interested in getting back his money which was lent to the petitioner more than a decade ago. He is not keen to send the accused to jail. His only plea is that the complainant may be adequately compensated. It is also brought to my notice that the petitioner had not so far complied with the direction issued by this court to deposit the fine amount at the time when the sentence was suspended by this court.

Having regard to the peculiar facts and circumstances of the case, I am satisfied that the substantive sentence of imprisonment imposed on the petitioner can be modified and the petitioner can be granted an opportunity to discharge the liability. Therefore, in modification of the sentence imposed on the petitioner he is directed to suffer imprisonment for one day and to pay Rs.90,000/- as compensation under Section 357 of the Code of Criminal Procedure and in default of payment he shall suffer simple imprisonment for three months. He shall appear before the court below on December 10, 2007 and remit a sum of Rs.90,000/-. On his appearance learned Magistrate shall ensure that petitioner suffers imprisonment till the rising of the court. The complainant shall be paid a sum of Rs.85,000/- as compensation. If the petitioner fails to appear and remit the amount as directed above, the learned Magistrate shall execute the sentence forthwith.

(A.K.BASHEER, JUDGE)

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